

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

BMO HARRIS BANK N.A.)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	
CHRISTOPHER STEVEN CHEAK,)	COMPLAINT
)	
Defendant.)	
)	

COMES NOW Plaintiff, BMO Harris Bank N.A., for its Complaint for Breach of Contract and Replevin against Defendant Christopher Steven Cheak, and alleges and states as follows:

PARTIES

1. Plaintiff BHB is a national banking association and has its principal place of business in Chicago at 111 W. Monroe Street, Chicago, Illinois 60603. The main office, per its Articles of Association, (Article II, Section 2.1) is located in Chicago, County of Cook and State of Illinois.

2. Christopher Steven Cheak (hereinafter “Cheak”) is an individual who resides at 499 N. Hawkins Street, Apt. 8, Rogersville, TN 37857, and as such, is domiciled, a resident and citizen of the Eastern District of Tennessee for diversity purposes.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there is diversity in citizenship and there is an amount in controversy that exceeds \$75,000, exclusive of interest and costs.

4. This judicial district is proper venue for this proceeding pursuant to 28 U.S.C. §1391(b)(2), as the Defendant resides, lives or does business in the Eastern District of Tennessee

and as a substantial part of the events giving rise to the cause of action, including signing of the contracts at issue, occurred in the Eastern District of Tennessee.

FACTUAL BACKGROUND

Loan and Security Agreement 1 (9001)

5. On or about September 16, 2020, Cheak entered into a Loan & Security Agreement (hereinafter “Agreement 1”) with BHB in the total amount of \$90,567.00, attached hereto as **Exhibit A**, for the use of the following:

Year	Manufacturer	Model	Description	Serial Number
2020	HYUNDAI	53X102 REEFER	53X102 REEFER	3H3V532C8LT420020
2020	THERMO KING	S600	S600	6001285435

6. Pursuant to Agreement 1, Cheak agreed to make monthly payments for the use of the above Equipment (hereinafter “Equipment 1”) beginning on or about November 1, 2020 for a term of 60 months.

7. Upon information and belief, Cheak used Equipment 1 at its address located at 499 N. Hawkins Street, Apt. 8, Rogersville, TN 37857

8. Pursuant to Agreement 1, Cheak was obligated to pay a minimum monthly payment of \$1,509.48.

9. Pursuant to paragraph 5.1 of Agreement 1, entitled “Events of Default,” Cheak will be in default under the loan if “Debtor” fails to pay when due any amount owed by it to BHB under this Agreement.

10. Pursuant to paragraph 5.2 of Agreement 1, entitled “Remedies,” upon default by Cheak, BHB may “declare the indebtedness hereunder to be immediately due and payable.”

11. On or about July 1, 2022, Cheak defaulted under the terms of Agreement 1 by failing to make the minimum monthly payment.

12. BHB is not currently in possession of Equipment 1.

Loan and Security Agreement 2 (5001)

13. On or about March 8, 2019, Cheak entered into a Loan & Security Agreement (hereinafter “Agreement 2”) with BHB in the total amount of \$206,734.54, attached hereto as **Exhibit B**, for the use of the following:

Year	Manufacturer	Model	Description	Serial Number
2019	WESTERN STAR TRUCKS INC	5700XE	5700XE	5KJJBHDR3KLKU5417

14. Pursuant to Agreement 2, Cheak agreed to make monthly payments for the use of the above Equipment (hereinafter “Equipment 2”) beginning on or about May 1, 2019 for a term of 74 months.

15. Upon information and belief, Cheak used Equipment 2 at its address located at 207 Lakeshore Circle, Rogersville, TN 37857.

16. Pursuant to Agreement 2, Cheak was obligated to pay a minimum monthly Payment of \$2,793.71.

17. Pursuant to paragraph 5.1 of Agreement 2, entitled “Events of Default,” Cheak will be in default under the loan if “Debtor” fails to pay when due any amount owed by it to BHB under this Agreement.

18. Pursuant to paragraph 5.2 of Agreement 2, entitled “Remedies,” upon default by Cheak, BHB may “declare the indebtedness hereunder to be immediately due and payable.”

19. On or about June 1, 2022, Cheak defaulted under the terms of Agreement 2 by failing to make the minimum monthly payment.

20. Equipment 2 has since been recovered by BHB.

CAUSES OF ACTION
COUNT I- BREACH OF CONTRACT
(LOAN AND SECURITY AGREEMENTS)

21. BHB incorporates by reference Paragraphs 1 through 20, as if set forth at length herein.

22. BHB and Cheak entered into valid contracts (Agreements 1 and 2, collectively the “Agreements”) wherein Cheak agreed to make monthly payments to BHB for use of Equipment 1 and 2 (collectively the “Equipment”).

23. Cheak defaulted on the terms of the Agreements and therefore is in default for failure to pay.

24. BHB sustained significant damages in the amount of \$151,079.21 due to Cheak’s breach and default of the Agreements.

WHEREFORE, PREMISES CONSIDERED, Plaintiff BMO Harris Bank N.A. demands judgment against Defendant Christopher Steven Cheak compensatory damages in the amount of \$151,079.21 plus accruing interest, and reasonable attorney’s fees and costs, and such other relief, as the Court may deem equitable and just.

COUNT II: REPLEVIN
(As to Equipment 1)

25. BHB incorporates by reference Paragraphs 1 through 24, as if set forth at length herein.

26. Cheak defaulted on the terms of Agreement 1 and therefore is in default for failure to pay.

27. BHB has estimated that the orderly liquidated value of Equipment 1 is approximately \$73,000.00.

28. BHB has notified Cheak of its intention to exercise its right to repossess Equipment 1 pursuant to the terms of Agreement 1.

29. In response, Cheak has refused, and continues to refuse, BHB access to Equipment 1. Defendant, Cheak, is denying BHB access to the following:

Year	Manufacturer	Model	Description	Serial Number
2020	HYUNDAI	53X102 REEFER	53X102 REEFER	3H3V532C8LT420020
2020	THERMO KING	S600	S600	6001285435

30. Plaintiff's interest therein will be adversely affected by the continued use by the Defendants of Equipment 1 due to wear and tear, as well as depreciation.

WHEREFORE, Plaintiff, BMO Harris Bank N.A. demands judgment against Defendant Christopher Steven Cheak for possession of the unrecovered Equipment described in Exhibit A; as well as reasonable attorneys' fees and costs; and such other relief as the Court may deem equitable and just.

Dated: October 4, 2022

WONG FLEMING, P.C.

Attorneys for Plaintiff BMO Harris Bank N.A.

By: /s/ James K. Haney

James K. Haney, Esq.
821 Alexander Road, Suite 200
Princeton, NJ 08540
Tel: (609) 951-9520
Fax: (609) 951-0270
Email: JHaney@wongfleming.com